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10/728,674	12/05/2003	Christopher Cavello	200314581-1	9081

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EXAMINER

STERLING, AMY JO

ART UNIT	PAPER NUMBER
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3632

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Please find below and/or attached an Office communication concerning this application or proceeding.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/728,674
Filing Date: December 05, 2003
Appellant(s): CAVELLO ET AL.

MAILED

MAR 24 2006

GROUP 3600

David Rodack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/4/05 appealing from the Office action
mailed 3/7/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct. The applicant's brief contains the section entitled "Summary of the Invention" and it is understood to contain the same contents as the "Summary of the Claimed Subject Matter."

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims stands 1-7, 9-12 rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 3854404 to Janda.

The patent to Janda discloses a device having a frame (10) and a computer display (automobiles contain computer displays), a swivel mechanism, including a foot (44), having a foot pad (bottom of 44) in contact with a support surface, the foot pad (bottom of 44) configured with a material that having a defined coefficient of friction that enables the rotation of the frame and impedes translational movement of the foot and a disk (38) which supports the majority of a load on the frame, which is fixedly and detachably connected to the foot (44) and secondary feet (bracket for 28) each having a

pad (28) and designed to share the load on the frame, which are connected to the frame (10) and disposed in the location surrounding the swivel mechanism the secondary feet (bracket of 28), the pads having a lower frictional coefficient than the foot (44), and an axle (40) in fixable and rotatable contact with the disk (38) and secured to the frame with a screw head (50).

Claims 1, 13 and 14 stand rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent No. 2264128 to Branch

Branch discloses a device having a frame (1) and a swivel mechanism , the mechanism having a foot (11) with a foot pad (12) in contact with a support surface, the foot pad configured with a elastomeric material that enables the rotation of the frame an impinges translational movement of the foot, and secondary feet (7) each having a elastomeric pad (lower outside portion of 7), the secondary pads having a lower frictional coefficient than the foot pad (12), wherein the secondary feet pads are configured with a material that enables rotation of the frame when supporting the device on the frame.

Claim Rejections - 35 USC § 103

Claim 8 stands rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3854404 to Janda as applied to claims 1 and 2 and further in view of United States Patent No. 6467746 to Paskiewicz .

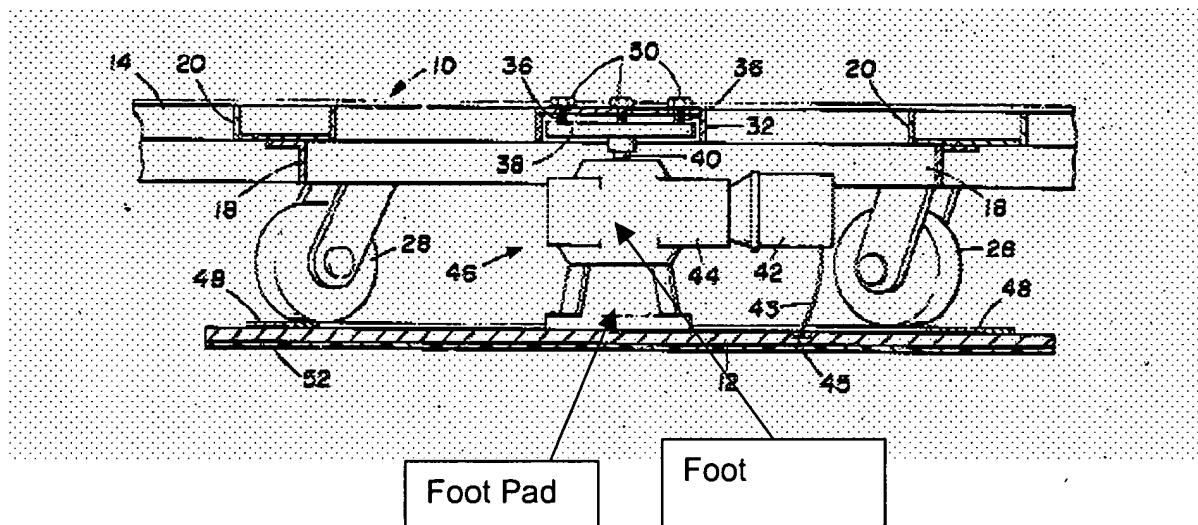
Janda discloses the basic inventive concept with the exception that it does not disclose wherein the swivel mechanism includes a spring at least partially surrounding the axle, and supporting the frame.

Pakiewicz discloses a swivel device which has a spring (See Col. 7, lines 2-5) which surrounds an axle (224) and supports a frame (200), the spring used for resiliently supporting the frame. Therefore it would have been obvious to one of ordinary skill in the art to have added a spring to the device of Janda in order to resiliently support the frame,

(10) Response to Argument

The applicant has argued that the reference to Janda does not disclose a “foot pad” that is configured with a material that enables rotation of the frame and impedes translation movement of the foot” as recited in independent claim 1. (See Appeal Brief, page 6, lines 8-10). This is unpersuasive because the reference clearly meets the limitations as recited.

Claim 1 requires a “foot pad (See Marked Figure Below) configured with a material that enables rotation of the frame and impedes translational movement of the foot”.



The applicant further states that the claim limitation is not met, because although the foot pad limits translational movement while enabling rotation of the frame, it is not the “material” which is responsible, but rather the fact that the “foot pad” is “fixed” to the base 12.

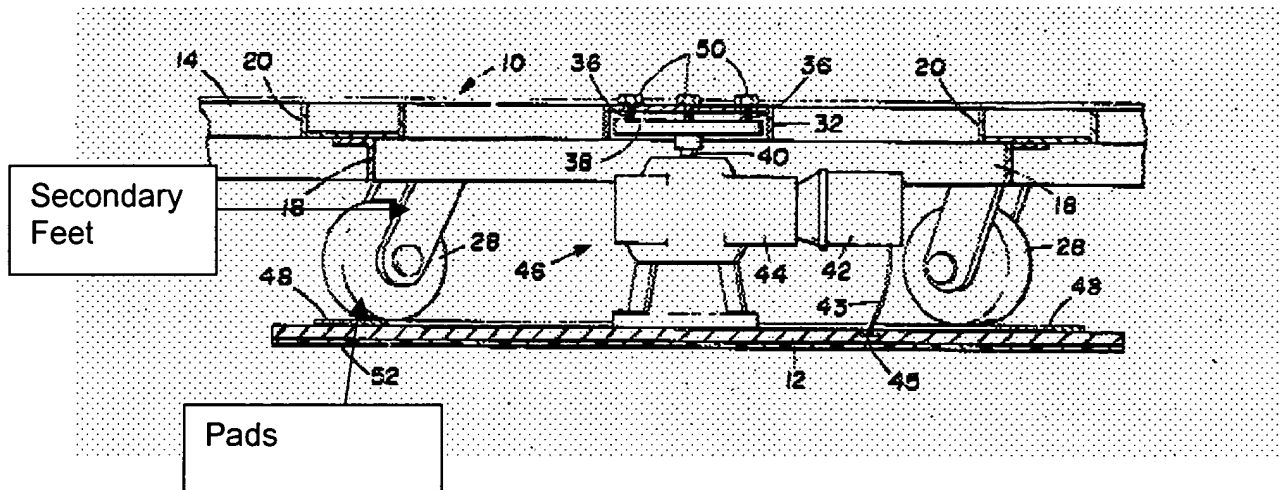
This argument is also unpersuasive in that it mischaracterizes the claim as recited and also is clearly met by the device taught in Janda. First of all, it is not clearly recited by the claim that it is indeed the responsibility of the “material” to provide the frame rotation and impede the translational movement of the foot. The claim specifically states, “a foot pad configured with a material that enables rotation and impedes translational movement...” and it is unclear as to whether the “enabling of rotation” and the “impeding of translational movement” are objects which are modifying the “foot pad” or are indirectly the action of the “material”. It is clear that the claim language could be interpreted to mean while the foot pad is made of a material, it is the foot pad which enables rotation and impedes translational movement, both objects modifying the subject of the phrase.

Secondly, even if the recitation of the limitation was grammatically interpreted to mean that the material was directly responsible for the “enabling” and the “impeding” it is evident that the material, including the fixed portion, meets this criteria, because the device operates in the manner as described.

The applicant also argues that the “foot” as described cannot be construed to be a foot, because it is not shaped like a “foot”. This argument appears to be superfluous in that the element (44) is described as a “foot” because the frame (10) rests upon the “foot” and the “foot” rests upon a surface, such a “foot” would operate on a “chair”, the shape of the foot which is not restricted.

The applicant has also argued that the Janda reference does not meet the limitation of “swivel” in that the Janda device must “pivot freely” in order to meet such a term. This is unpersuasive in that the term “swivel” is not equal to “pivot freely” which is a much narrower interpretation of the limitation. The applicant is reading limitations into the claim which do not appear.

The applicant has also argued that the Janda device does not disclose “secondary feet” and “pads”. This is unpersuasive in that the secondary feet (as shown below) are shown to support the frame to a surface.



With regards to claim 12, the device in Janda is designed to support an automobile which would contain a computer display monitor.

With regards to claims 1, 13 and 14, the applicant has argued that the Branch reference does not read on the limitation of claim 1, which recites, “the secondary feet pads are configured with a material that enables rotation of the frame when supporting a device on the frame” and then states because the “board cannot be accidentally rotated while in use” (See Appeal Brief page 11, part B). This is an gross mischaracterization of the device, as taught in Branch, and this statement misses the true meaning of the operation of the device because the phrase has been taken out of context of the teachings.

The Branch device operates by putting dough or a “device” on the frame (6), while the user of the device is pushing down on the dough, the device cannot be accidentally rotated, but after the user is done pushing down on the frame and while the dough is still “intact” on the frame, the device can be rotated for the user to obtain a

more desirable position. See entire statement of operation below: (Taken from Col. 2, lines 47)

"In operation, the board is placed upon a supporting surface...and the rolling of pastry or similar substance has begun. In the rolling operation the board is naturally pushed down to compress the suction cup and thus press the knobs firmly into contact with the supporting surface. This prevents the board from either slipping or rotating with respect to the supporting surface during use. When pressure is released, the suction cup will continue to prevent the board from slipping but it will lift the board slightly so as to permit the board to be rotated thus placing the pastry and board in a new desirable position with respect to the person doing the rolling...on the other hand it can never slide laterally during use..."

The arguments that pertain to claim 8 have already been discussed above and hinge on the definition of a foot and foot pad.

(11) Related Proceedings Appendix

The statement Related Proceedings Appendix contained in the brief appears to be correct.


Conclusion


Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8a.m.-5:00p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can be reached at 571-272-6788.

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Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.

AJS 
Amy J. Sterling
3/21/06

Conference Members:
Bob Olszewski 
Pete Cuomo 